Petition

81-1388

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NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

PRINCESS SEA INDUSTRIES, ET AL,

Petitioner,

v.

STATE OF NEVADA, ET AL,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEVADA

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Petitioner

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Pursuant to Rule 21, Rules of the United States Supreme Court, Petitioner asserts the following:

A. Questions Presented for Review:

1. Whether this Honorable Court must give additional guidelines deciding "the precise extent to which the First Amendment permits regulation of advertising that is related to acitivities the State may legitimately regulate or even prohibit," within the meaning of Bigelow v. Virginia, 421 U. S. 809, 825 (1975), Virginia State Board of Pharmacy, et al, v. Virginia Citizens Consumer Council, Inc., et al, 425 U.S. 748, (1976), and Central Hudson Gas and Electric Corporation v. Public Service Commission of New York, 447 U.S. 557 , 100 S. Ct. 2343 (1980).

2. Whether Nevada State Assembly Bill 141, Section 201.430, 1979 Nevada Revised Statutes, violates the First, Fifth and Fourteenth Amendments to the United States Constitution?

3. Whether, if the operation of a licensed brothel is permitted in some counties of the State of Nevada, may the State of Nevada prohibit the advertising of said brothels in publications which are sent by United States mail into counties of Nevada and states of the United States where prostitution conducted in brothels or any other form of prostitution is per se illegal, within the meaning of Bigelow v. Virginia, 421 U.S. 809 (1975), and the privileges afforded by the Interstate Commerce Clause and the Equal Protection clause of the United States Constitution?

4. Whether, if prostitution conducted in licensed brothels is permitted in some counties of Nevada, can the State of Nevada, in any way prohibit the advertising of said brothels in publications of general circulation whatsoever, within the meaning and privileges of the First

and Fourteenth Amendments to the United States Constitution?

5. Whether Nevada Revised Statute 201.430 is unconstitutionally vague and overly broad as written and/or as applied?

B. The parties to this proceeding are:

Petitioners:

(1) Princess Sea Industries, Inc.

(2) MEAD PUBLISHING, INC., d/b/a LAS VEGAS PANARAMA, and

(3) GALAXY COMPOSITION, INC. d/b/a LAS VEGAS MIRROR

Respondents:

(1) STATE OF NEVADA

(2) CLARK COUNTY, a political subdivision of the State of Nevada

(3) BOARD OF CLARK COUNTY COMMISSIONERS, ROBERT H. BROADBENT, JACK R. PETITTI, THALIA DONDERO, R. J. RONZONE, MANUEL CORTEZ, SAMUEL BOWLER,

and DAVID CANTER, constituting the members of said Board

(4) ROBERT MILLER, District Attorney, Clark County, Nevada

(5) RICHARD BRYAN, Attorney General, State of Nevada, and

(6) JOHN McCARTHY, Sheriff of Clark County, Nevada.

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v.	)
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PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEVADA

TO: THE HONORABLE WARREN E. BURGER, CHIEF JUSTICE OF THE UNITED STATES, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

PRINCESS SEA INDUSTRIES, ET AL, Petitioners, seek a Writ of Certiorari to the Supreme Court of Nevada to review a decision of that Court entered October 28, 1981, entitled Princess Sea Industries, et al v. State of Nevada, et al, 635 P. 2d 281, 97 Nev. Adv. Op. 174, (1981).

DATED: January , 1982.

Respectfully submitted,

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Member of the Bar,
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D. OFFICIAL/UNOFFICIAL REPORT OF OPINIONS BELOW

The opinion of the Eighth Judicial District Court of the State of Nevada, County of Clark is unpublished, was filed August 1, 1979 and appears as Appendix "A" to this Petition.

The opinion of the Supreme Court of Nevada herein sought review is entitled Princess Sea Industries, Inc., et al v. State of Nevada, et al, and is published at 635 P. 2d 281, 97 Nv. Ad. Op.174. It appears as Appendix "B" to this Petition.

E. JURISDICTIONAL GROUNDS

(1) The date of judgment sought to be reviewed was October 28, 1981, and it was entered October 28, 1981; it is published as Princess Sea Industries, Inc., et al v. State of Nevada, et al, 635 P. 2d 281, 97 Nv. Ad. Op. 174.

(2) The statutory provision believed to confer jurisdiction on this Honorable

Court is 28 U.S.C. 1257 which provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United

States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

F.1 UNITED STATES CONSTITUTIONAL AMENDMENTS/PROVISIONS INVOLVED

First Amendment.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself,

nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws.

Interstate Commerce Clause.

Article I, Section 8, Clause 3.

The congress shall have power . . .

. . . To regulate commerce with foreign nations, and among the several States and with the Indian Tribes . . .

F.2 NEVADA REVISED STATUTES INVOLVED

Nevada Revised Statutes 201.430 provides:

Section 1. NRS 201.430 is hereby amended to read as follows:

201.430 1. It is unlawful for any owner, operator, agent or employee of a house of prostitution, or anyone acting on behalf of any such person, to advertise any house of prostitution:

(a) In any public theater,

on the public streets of any city or town, or on any public highway; or

(b) Anywhere in any county, city or town where prostitution is prohibited by local ordinance or where the licensing of a house of prostitution is prohibited by state statute.

Section 2. NRS 201.440 is hereby amended to read as follows:

201.440 Any person, company, asociation or corporation who knowingly allows any owner, operator, agent or employee of a house of prostitution, or anyone acting on behalf of any such person, to advertise a house of prostitution in his place of business shall be punished:

1. For the first offense,

by a fine of not more than $500.00.

2. For any subsequent offense, for a misdemeanor.

G. CONCISE STATEMENT OF THE CASE

Petitioner, Princess Sea Industries, Inc. is the owner and operator of a brothel in Nye County, Nevada, known as The Chicken Ranch. The brothel is approximately 65 miles from Las Vegas, Nevada, and has been operating since 1976. The brothel owner registers with the Sheriff's Department and its President, Walter Plankinton, is issued a licensing card. All of the girls working for the brothel are also registered and pay a registration fee. The brothel operates under and complies with a comprehensive licensing scheme enacted and enforced by the Nye County, Nevada, Board of County Commissioners. There are five such licensed brothels operating in Nye County, Nevada.

Petitioners, MEAD PUBLISHING, INC. and GALAXY COMPOSITION, INC. are two small local publishing concerns primarily devoted to publishing "entertainment type" newspapers furnishing tourists to Las Vegas with

information of a wide variety concerning current entertainment in and around the Las Vegas area. These publications have regularly carried advertisements concerning brothels in Nye County, Nevada and other counties in Nevada.

H. HISTORICAL STAGES IN STATE COURT WHERE ISSUES WERE RAISED.

In May of 1979, Governor List signed into law A.B. 141 (now NRS 201.430) which is an act relating to crimes against public decency and good morals; prohibiting the advertisement of prostitution where its practice is unlawful; providing a penalty and providing other matters properly relating thereto. This law went into effect on July 1, 1979. Petitioners filed a Complaint for Declaratory Relief, and a Motion for Temporary Restraining Order, Preliminary and Permanent Injunction in the Eighth Judicial District Court for the County of Clark on June 28, 1979. The Temporary Restraining Order was denied on June 29,

1979. On July 19, 1979 the Complaint for Declaratory Relief was argued before the Honorable Michael Wendell and on August 1, 1979 the Complaint for Declaratory Relief was denied. See Opinion of District Judge Michael Wendell, Appendix "A" hereto. On September 20, 1979 Petitioners filed a Notice of Appeal to the Nevada Supreme Court and the matter was agrued before the Court on November 14, 1980. On October 28, 1981 the Nevada Supreme Court affirmed the ruling of the lower District Court. See Nevada Supreme Court Opinion, No. 12252 attached hereto as Appendix "B". From this ruling this appeal is sought.

I. ARGUMENT

The issue before this Honorable Court is the constitutionality, under the First and Fourteenth Amendments to the Constitution of the United States, of a Nevada statute which prohibits the advertising by lawfully licensed brothels in publications of general circulation that is published, distributed or mailed into a Nevada county which forbids the operation of a licensed brothel.

Where no law precludes the free travel of an adult citizen from a precluded brothel county to a permitted brothel county to avail the traveller of brothel services, it is incongruous to attempt to foreclose advertising of that brothel in a county where law has foreclosed the lawful operation.

However, it is not only incongruous, but unconstitutional under the First and Fourteenth Amendments to prohibit the advertising of lawfully licensed brothels,

in publications which are printed, distributed or mailed into counties prohibiting such activity.

In Bigelow v. Virginia, 421 U.S. 809, 44 L. Ed. 2d 600, 95 S. Ct. 2222, this Honorable Court held unconstitutional a Virginia statute that purported to criminally punish a Virginia newspaper publisher running an advertisement of commercial nature advertising a New York abortion clinic service. The publication was in a so-called "underground newspaper" enjoying circulation inter alia, around the campus of the University of Virginia at Charlottesville. (421 U.S. 809, 811, fn. 1, 95 S. Ct. 2222, 2227, 44 L. Ed. 2d 600).

Appellant-Petitioner Bigelow was charged with violation of then existing Virginia Code Annotated 18.1-63 (1960) which read:

> "If any person, by publication, lecture, advertisement, or by the sale or circulation of any publication, or in any other manner

encourage or prompt the procuring of abortion or miscarriage, he shall be guilty of a misdemeanor."

In Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) and Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973), this Honorable Court decided that legalized abortion was constitutionally permissible under certain circumstances, thus making the providing of abortions in the State of New York fully legal if done in compliance with Roe and Doe, supra.

The issue, then, in Bigelow, supra, was whether Virginia could punish the publisher of an advertisement in a publication in Virginia which disclosed the availability of a lawful abortion service in New York, even though Virginia did not permit abortion.

Bigelow provides substantial guidelines that convince the neutral mind that the ruling of the Nevada Supreme Court in the instant case in upholding the assailed

statute precluding brothel advertisement is erroneous and, violates Petitioner's rights under the First and Fourteenth Amendments.

(a) Unconstitutional overbreadth and void for vagueness.

At trial and on appeal, petitioner assaulted the Nevada Statute in question, NRS 201.430, on grounds that it was vague and overly broad. The 4-man majority opinion refused to discuss and rule this issue. cf. Concurring opinion by MANOUKIAN J., final paragraphs, page B-31,Appendix "B", who discussed this issue. This Honorable Court has held it to be error for a State Court of last resort to outright refuse to analyze and decide a First Amendment assailment on a state statute for unconstitutional overbreadth. In Bigelow v. Virginia, 421 U.S. 809, 815-818, 95 S. Ct. 2222, 2229-2230, this Court stated:

"... But we conclude that the Virginia courts erred in denying Bigelow's standing to make this claim (overbreadth), where "pure speech" rather than conduct was involved, without any consideration of whether the alleged overbreadth was or was not substantial. . ."

(b) Application of First Amendment guarantees, of speech and press to paid commercial advertisements.

Bigelow v. Virginia, 421 U.S. 809, 818-829, 44 L. Ed. 2d 600, 95 S. Ct. 2222, 2230-2236 clearly held that speech in the form of commercial advertisement "is not

stripped of First Amendment protections merely because it appears in that form." Pittsburgh Press Co. v. Human Rel. Comm'n, 413 U.S. 376, 384, 93 S. Ct. 2553, 2558, 37 L. Ed. 2d 669 (1973); New York Times v. Sullivan, 376 U.S. 254, 266, 84 S. Ct. 710, 718, 11 L. Ed. 2d 686 (1964).

The Nevada Supreme Court, however, erroneously believed that Bigelow, supra, was the last word of this Honorable Court defining "the precise extent to which the First Amendment permits regulation of advertising that is related to activities the State may legitimately regulate or even prohibit." (See page B-8 , Appendix "B", Opinion of the Nevada Supreme Court.)

However, it is plain that Virginia State Board of Pharmacy, et al v. Virginia Citizens Consumer

Council, Inc., et al, 425 U.S. 748, 759-762, 48 L. Ed. 2d 346, 96 S. Ct. 1817, 1824-1826 held that speech which does "no more than propose a commercial transaction" is not so far removed from any "exposition of ideas" and "from truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of government" that it lacks protection under the First and Fourteenth Amendments.

It must be emphasized that the advertisement here at issue did not promote or suggest illegal activity in the prohibited counties, but on the other hand, only advised of legally permissible services available in counties where prostitution was fully legal.

Actually, the advertisements lay bare and open avenues of dis-

cussion and debate on the legalized, medically controlled practice of the "oldest of professions", a subject and "profession" obviously polarizing the American public as diametrically as the hitherto well-litigated areas of capital punishment, abortion, dissemination of birth control products and information, and the personal viewing of obscene motion pictures in the home. Whether prostitution should be legalized in licensed, medically controlled brothels has long been a subject of debate in many areas. That Nevada permits such an activity in certain of its counties has greatly advanced such debate and has provided a viable forum and actual basis to foster such discussions and debates. Petitioners advertisement advances such meaningful discussion

and debate, for clearly anyone responding to such an advertisement and becoming a patron thus becomes an informed voice in the Freedom of Speech on this almost age-old subject.

In the case of Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 48 L. Ed. 2d 346 (1976), the Court, in striking down a Virginia Statute which prohibited the advertising of prescription drug prices, developed four criteria, at least one of which must be met, before a State may prohibit types of advertisements. These criteria are (1) the prohibition on advertising is in fact a restriction of time, place or manner of advertising and not a complete prohibition, (2) the advertisement is false or misleading, (3) the transaction

covered by the advertisement is itself illegal, or (4) there are special problems of the electronic broadcast media presented.

The Court went on to hold:

"What is at issue is whether a State may completely suppress the dissemination of concedely truthful information about entirely lawful activity, fearful of that information's effect upon its disseminators and its recipients. Reserving other questions, we conclude that the answer to this one is in the negative."

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., supra at pg. 365 (L. Ed.).

The United States Supreme Court reiterated this rule in the case of Carey v. Population Services

International, 431 U.S. 678, 52 L. Ed. 2d 675 (1977). In this case the Court stated:

> "The District Court's holding that the prohibition of any advertisement or display of contraceptives is unconstitutional was clearly correct. Only last term "[Citing Virginia Pharmacy Board, supra] [We] "held that a State may not completely suppress the dissemination of concededly truthful information about entirely lawful activity, even when that information could be categorized as 'commercial speech'. Just as in that case, the statute challenged here seeks to suppress completely any information about the availability and price of contra-

ceptives."

Carey v. Population Services International, supra, at pg. 694 (L. Ed.).

Petitioner's position, very simply, is that petitioner is a legitimate business whose legitimacy is statutorily recognized in the State of Nevada. The petitioner advertises a legal business and the advertisements are truthful. These advertisements appear in print media and not on the electronic media. N.R.S. 201.430 seeks to totally prohibit plaintiff's advertising. It fails to meet the criteria as set down by this Honorable Court in Virginia State Board of Pharmacy, supra, and seeks to deprive petitioner of an existing right which it enjoys. There is no reason or basis for this application of the State's police power. It

deprives petitioner of a property right without due process of law and is an arbitrary, capricious and discriminatory application of police power.

In Central Hudson Gas & Electric Corporation v. Public Service Commission of New York, 447 U.S. 557, 65 L. Ed. 2d 341, 100 S. Ct. 2343 (1980), this Honorable Court set forth a guadri-element test for First Amendment protection of commercial speech, protecting commercial speech and advertising from unwarranted governmental regulation. In applying the First Amendment to this area, this Honorable Court has rejected the "highly paternalistic" view that the government has complete power to suppress or regulate commercial speech. 100 S. Ct. 2343, 2349. While this Honorable Court recognizes

a distinction between commercial speech or advertising and other constitutionally guaranteed expression, the state may not abrogate commercial advertising unless certain criteria are met. "The protection available for particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation" and "there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity." 100 S. Ct. 2343, 2350. "If the communication is neither misleading nor related to unlawful activity, the government's power is more circumscribed. . ."

The 4 part test is:

(1) The commercial speech must concern lawful activity and not be misleading;

(2) The asserted governmental interest must be substantial;

If each of the above yield a positive, affirmative answer, then consideration must be given to the remaining

(3) The regulation must directly advance the governmental interest asserted; and

(4) The restriction must not be more extensive than is necessary to serve that interest.

Central Gas v. Public Service, supra, 447 U.S. 557, 100 S. Ct. 2343, 2351, 65 L. Ed. 2d 341.

A. Applying this test, neither the State of Nevada and its agents, nor its Supreme Court, has ever contended that the advertisement here under assailment is either inaccurate or misleading, or relates to unlawful activity. Typical

ads relate the address and phone number of the brothel, and suggest that attractive female companionship will be available. It has never been contended that the law should be upheld because the advertising is false, misleading or otherwise devious to the intended reader, nor can it be said that the advertisement deals with unlawful activity for as repetitively asserted elsewhere in this petition, Nevada legally licenses brothels in counties where prostitution is permitted. Therefore, it must be concluded that petitioner's advertisement satisfied the initial element of the guadrilateral test.

B. The "asserted governmental interest" (which must be substantial)

which is here involved is not given explication in the majority opinion of the Nevada Supreme Court. Assuming illumination from the concurring opinion of MANOUKIAN, J. one would be led to believe that Nevada has enacted the statute because

> "the state has a special interest in maintaining an atmosphere of decency and sound morals, and therefore, in counteracting the deleterious effect prostitution may have on the public welfare..." (Opinion of MANOUKIAN, J., Nevada Supreme Court, Appendix "B", Page B-19).

Yet, such an explication is incongruous and is intellectually a non-sequitur when one asks whether the State feels that the morals and "deleterious effects" on citizens

of its lesser populated counties are to be totally ignored and disregarded while those of its more populous counties are somehow to be insulated and protected from this advertising. Is a life and soul and moral character of a citizen of Nye County (where a licensed brothel may be operated) entitled to no "protection" while the same Nevada citizen living in Clark County or Washoe County (where a brothel may not be licensed) is entitled to full "protection"? If, say, a small county of a mere few thousand citizens has brothels, isn't their "moral character" entitled to the equal and same protection as those of more populous counties? Isn't the counteracting of "the deleterious effect prostitution may have on the public welfare" of a county hosting a lawful brothel

entitled to exactly the same effort by the paternalistic state that may be applied in the more populous counties? These questions are clearly rhetorical, and suggest the foolhardiness of the Nevada posture. Either prostitution itself is or is not "morally bad and deleterious" and the question should not have its answer hinge on whether more than 250,000 people or less than 250,000 are enclosed within a certain county boundary.

Stripped of its veneer, the State may be saying that the existence of the advertisements may contribute to more use of the legitimate sexual atmosphere of the licensed brothels in a sister county but such use and patronage would be fully legitimate and lawful under existing law.

It is, therefore, impossible to maintain that the asserted governmental interest is substantial. 100 S. Ct. 2343, 2351. It would appear that if Nevada has a legitimate interest "in maintaining an atmosphere of decency and sound morals, and therefore in counteracting the deleterious effect prostitution may have on the public welfare," it can advance its interest in the obviously more logical manner -- the full and outright ban of licensed brothels throughout the state. By choosing not to so do (N.R.S. 244.345, especially subsection 8, Nye County v. Plankinton, 94 Nev. 739) and by attempting to ban an advertisement of the legally, lawfully, legitimate brothel in a county where such a facility is not legitimate the State demonstrates

no substantial, and surely no logical, governmental interest. The second element must therefore be answered in the negative.

There is no reason or basis for this application of the State's police power. It deprives Petitioners of a right without due process of law and is arbitrary, capricious and discriminatory in its application.

Nevada Revised Statute 201.430 is violative of the First and Fourteenth Amendments of the United States Constitution and as fully set forth by this Honorable Court.

J. CONCLUSIONS

Because the Supreme Court of Nevada has incorrectly applied the mandates of this Honorable Court in the area of First Amendment Freedom of Speech in commercial advertising, as explicated in Bigelow v. Virginia, 421 U.S. 809, Virginia State

Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., et al, 425 U.S. 748, and Central Hudson Gas & Electric v. Public Service Comm. of New York, 447 U.S. 557, 100 S. Ct. 2343 (1980), and because of the need for additional guidelines from this Honorable Court in this important area of nationwide concern in commercial advertising, certiorari to the Nevada Supreme Court must be granted.

Respectfully submitted,

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Appendix

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APPENDIX

(1) OPINION OF THE EIGHTH JUDICIAL DISTRICT COURT, STATE OF NEVADA, COUNTY OF CLARK, FILED AUGUST 1, 1979.

APPENDIX "A"

IN THE EIGHTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA, IN AND FOR

THE COUNTY OF CLARK

GALAXY COMPOSITION, INC., a Nevada corp. dba LAS VEGAS MIRROR, Plaintiff, v. STATE OF NEVADA, CLARK COUNTY, a political subdivision of the State of Nevada, BOARD OF CLARK COUNTY COMMISSIONERS, ROBERT N. BROADBENT, JACK R. PETITTI, THALIA DONDERO, R.J. RONZONE, MANUEL CORTEZ, SAMUEL BOWLER and DAVID CANTER, constituting the members of said Board; ROBERT MILLER, District Attorney, Clark County, Nevada, RICHARD BRYAN, Attorney General, State of Nevada, JOHN McCARTHY, Sheriff of Clark County, Nevada, JOHN DOES I thru V, and DOE CORPORATIONS I thru V, Defendants.	)	CASE NO. A189, 681
MEAD PUBLISHING, INC., a Nevada corporation, dba LAS VEGAS PANARAMA, Plaintiff, v. STATE OF NEVADA, CLARK COUNTY, a political subdivision of the State of Nevada, BOARD OF CLARK COUNTY COMMISSIONERS, ROBERT N.	)	CASE NO. A189, 680

JACK R. PETITTI, THALIA DONDERO, R. J. RONZONE, MANUEL CORTEZ, SAMUEL BOWLER and DAVID CANTER, constituting the members of said Board; ROBERT MILLER, District Attorney, Clark County, NV, RICHARD BRYAN, Atty. Gen., St of NV; JOHN McCARTHY, Sheriff of Clark Co., Nevada, et al. Defendants.	)	
PRINCESS SEA INDUSTRIES, INC., a Colorado corporation, Plaintiff, v. THE STATE OF NEVADA, and THE COUNTY OF CLARK, by and thru its Board of County Commissioners, Chairman, SAM BOWLER, DAIVD CANTER, THALIA DONDERO, ROBERT BROADBENT, MANUEL CORTEZ, R.J. RONZONE, and JACK PETITTI; JOHN McCARTHY, in his capacity as Sheriff of Clark County, and ROBERT J. MILLER, in his capacity as District Attorney of Clark County, Nevada, Defendants.	)	CASE NO. A189, 674

D E C I S I O N

This matter came before the Court on a consolidated hearing for declaratory relief seeking to test the constitutionality of a statute enacted in the last legislative

session. Further, plaintiffs have requested an injunction preventing the enforcement of said statute. All parties agreed that this evidentiary hearing would also be the trial on the merits.

The statute challenged, Assembly Bill 141, amends NRS 201.430 and NRS 201.440 and prohibits the advertising of a hosue of prostitution "anywhere in any county, city or town where prostitution is prohibited by local ordinance or where the licensing of a house of prostitution is prohibited by state statute." (NRS 201.430[1]). The statute provides a fine for the first offense and makes subsequent offenses a misdemeanor. The new statute also provides the same punishment for "any person, company, association or corporation who knowingly allows any . . . house of prostitution . . . to advertise . . . in his place of business." (NRS 201.440). NRS 244.345(8) precludes the licensing of houses of prostitution in any county having

a population of 200,000 or more.

The plaintiffs, a brothel operator and two local publishers, contend that this statute is constitutionally infirm, alleging it to be in violation of the First, Fifth and Fourteenth Amendments of the U.S. Constitution as well as the corresponding provisions of the Nevada Constitution.

It is well established that statutes of the State that come under judicial scrutiny are presumed valid and the burden is on the plaintiffs to overcome this presumption. Caton v. Frank, 56 Nev. 56; Viale v. Foley, 76 Nev. 149. The regulation of commercial business advertising is a proper exercise of the legislature's police power. Viale v. Foley, supra. This is true even in the context of the First Amendment. Although the recent U.S. Supreme Court decisions have held that commercial speech is to be accorded some of the First Amendment protections,

it has not yet been given the same protection as other forms of speech. See Ohralik v. Ohio State Bar Assn., ___U.S.___, 98 S.Ct. 1912; Carey v. Population Services International, 431 U.S. 678; Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748; Bigelow v. Virginia, 421 U.S. 809. All of the foregoing cases are distinguishable from the instant case.

In Carey v. Population Services International, 431 U.S. 678, the Court dealt with the advertising of contraceptives. The First Amendment was only tangently involved as the primary basis of the Court's ruling was the fundamental rights of privacy and procreation.

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Counsel, Inc., 425 U. S. 748, was concerned with the advertising of prescription drug price information. The Court stated, "[w]hat is at issue is whether a State may

completely suppress the dissemination of concededly truthful information about entirely lawful activity fearful of that information's effect upon its disseminators and recipients" at 773 [emphasis added].

The Court in Bigelow v. Virginia, 421 U.S. 809, was faced with the advertising of abortion services that were legal in New York but illegal in Virginia. Although somewhat analogous to the instant case in a broad way, Bigelow was specifically limited to its factual context (See F.N. 10). The Court stated: "We need not decide in this case the precise extent to which the First Amendment permits regulation of advertising that is related to activities the State may legitimately regulate or even prohibit."

Finally, the Court in Ohralik v. Ohio State Bar Assn., ___U.S.___, 98 S. Ct. 1912 stated: "It has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal

merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed . . . the State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity."

We turn to examine the nature of the business involved in this legislation. What exists is an activity that is not entirely lawful nor completely suppressed. This is an activity that is contrary to public decency and good morals, and which may subject persons involved therein to felony prosecution (NRS 201.300, et seq.), but no longer a common law nuisance per se (Nye Co. v. Plankinton, 94 Nev. Adv. Opn. 216). It is an operation wherein no fundamental interest or right pertains. It could be completely prohibited by the legislature.

It thus appears that the operation of a house of prostitution is a type of

activity completely distinguishable from the types of businesses concerned in the cases cited and relied on by the plaintiffs.

It must be presumed that the Legislature had knowledge of existing conditions on which the legislation is based, i.e., prostitution (Ex Parte Iratacable, 55 Nev. 263). It follows it must be further presumed that the Legislature had a rational basis for creating a limited prohibition on the commercial advertising of brothels. That conclusion is further supported when one examines the exhibit received in evidence at the time of the hearing, soliciting girls over eighteen (18) years to become prostitutes.

This Court finds and declares that Assembly Bill 141 of the 1979 Session of the Nevada State Legislature is not violative of the provisions of the United States or Nevada Constitutions. It is a valid exercise of the police power of the State of Nevada. It reasonably limits

a form of commercial advertising which may be harmful to the public by prohibiting advertising of brothels only in those counties where prostitution is unlawful by county ordinance or prohibited by state statute.

Counsel for defendants will prepare the appropriate Findings of Fact, Conclusions of Law and Judgment.

DATED this 1st day of August, 1979.

MICHAEL J. WENDELL
DISTRICT JUDGE

(2) OPINION OF THE SUPREME COURT OF NEVADA, Princess Sea Industries, Inc., et al v. State of Nevada, et al, 635 P. 2d 281, 97 Nv.Ad.Op. 174, entered/filed October 28, 1981

APPENDIX "B"

IN THE SUPREME COURT OF THE STATE OF NEVADA

PRINCESS SEA INDUSTRIES, INC., MEAD PUBLISHING, INC., d/b/a LAS VEGAS PANARAMA; and GALAXY COMPOSITION, INC., d/b/a LAS VEGAS MIRROR,	)	
Appellants,	)	
vs.	)	No. 12252
STATE OF NEVADA, CLARK COUNTY, a political subdivision of the State of Nevada, BOARD OF CLARK COUNTY COMMISSIONERS, ROBERT H. BROADBENT, JACK R. PETITTI, THALIA DONDERO, R. J. RONZONE, MANUEL CORTEZ, SAMUEL BOWLER, and DAVID CANTER, constituting the members of said Board; ROBERT MILLER, District Attorney, Clark County, Nevada, RICHARD BRYAN, Attorney General, State of Nevada, and JOHN McCARTHY, Sheriff of Clark County, Nevada,	)	
Respondents.	)	

Appeal from judgment in consolidated proceedings, Eighth Judicial District Court, Clark County; Michael J. Wendell, Judge.

Affirmed.

Smith, Maurer & Cremen, Las Vegas, for Appellant, Princess Sea Industries, Inc.; Edward Bernstein, Las Vegas, for Appellants Mead Publish-

ing, Inc. and Galaxy Composition, Inc.

Richard Bryan, Attorney General, Carson City, and Josh Landish, Deputy, Las Vegas, for Respondent State of NV; Robert Miller, District Atty., Clark County, and S. Mahlon Edwards, Deputy, Las Vegas, for Respondents Clark County, Board of County Commissioners, and Sheriff John McCarthy

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O P I N I O N

By the Court, MOWBRAY, J.:

Appellants, plaintiffs below, sought to have Assembly Bill 141, 1979 Nev. Stats., declared unconstitutional, and to obtain an injunction against enforcement of its provisions. The district court denied the relief requested. We affirm its judgment.

THE FACTS

The appellants include the owner of a legal Nye County brothel, and two newspaper publishing concerns which have published and are willing to publish advertisements concerning the brothel. The

legislation in question purports to prohibit advertising of any house of prostitution: "Anywhere in any county, city or town where prostitution is prohibited by local ordinance or where the licensing of a hosue of prostitution is prohibited by state statute." The enactment also undertakes to punish: "Any person, company, association or corporation who knowingly allows any owner, operator, agent or employee of a house of prostitution, or anyone acting on behalf of any such person, to advertise a house of prostitution in his place of business . . ." Appellants have challenged these legislative provisions, contending that advertisements they wish to publish are commercial speech protected by the First Amendment to the United States Constitution.

THE CONSTITUTIONALITY OF THE LEGISLATION

NRS 201.430 and 201.440, as amended, do prohibit a variety of commercial speech, i.e., advertisements containing information

concerning houses of prostitution, in certain areas within the State of Nevada.[1] This Court's task is to determine whether the quoted legislative proscriptions must be declared unconstitutional,pursuant to principles heretofore articulated by the United States Supreme Court.

Expression concerning purely commercial transactions may fall within the ambit of the First Amendment's protection. Ohralik v. Ohio State Bar Assn., 436 U.S. 447, 455 (1978). Still, the United States Supreme Court recognizes a "'commonsense' distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech."

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[1] NRS 201.430(2) details certain specific information sought to be proscribed from distribution to the public, i.e.:"Inclusion in any display, handbill or publication of the address, location or telephone number of a house of prostitution or of identification of a means of transportation to such a house, or of directions telling how to obtain any such information, constitutes prima facie evidence of advertising for the purposes of this section."

Id. at 455-56. Accordingly, commercial speech is afforded only, "a limited measure of protection commensurate with its subordinate prosition in the scale of First Amendment values." Furthermore, "modes of regulation that might be impermissible in the realm of non-commercial expression" are permitted. Id.

As this Court has said repeatedly, an "act of the legislature is presumed to be constitutional and should be so declared unless it appears to be clearly in contravention of constitutional principles." State ex rel. Tidvall v. District Court, 91 Nev. 520, 526, 539 P. 2d 456 (1975). In cases of doubt, every possible presumption and intendment will be made in favor of constitutionality. "Courts will interfere only in cases of clear and unquestioned violation of fundamental rights." Id., 91 Nev. at 526-527, 539 P. 2d at 460; see also Anthony v. State of Nevada, 94 Nev. 337, 341,

580 P.2d 939 (1978); Damus v. County of Clark, 93 Nev. 512, 516, 569 P.2d 933 (1977); City of Las Vegas v. Ackerman, 85 Nev. 493, 499, 457 P.2d 525 (1969). The issue before us, then, is whether Assembly Bill 141 clearly contravenes constitutional principles heretofore established as to commercial speech.

Bigelow v. Virginia, 421 U.S. 809 (1975), is distinctly the Supreme Court case closest to the instant one on its facts. Still, that precedent is readily distinguishable. Bigelow involved an effort to bar advertising of a clinic offering legal abortions, i.e., a medical service over which a state government has but narrowly circumscribed power. See, e.g., Belotti v. Baird, 428 U.S. 132 (1976); Singleton v. Wulff, 428 U.S. 106 (1976); Connecticut v. Menillo, 423 U.S. 9 (1975); Doe v. Bolton, 410 U.S. 179 (1973); Roe v. Wade, 410 U.S. 113 (1973). Moreover, in Bigelow the high

court explicitly stated that it was not deciding, "the precise extent to which the First Amendment permits regulation of advertising that is related to activities the State may legitimately regulate or even prohibit." 421 U.S. at 825.

Prostitution is an activity which the State of Nevada may choose either to regulate or to prohibit entirely. See NRS 244.345; See also Nye County v. Plankinton, 94 Nev. 739, 587 P.2d 421 (1978). Thus, at this time, absent further guidance from the Supreme Court, it appears neither necessary nor wise for this Court to construe either Bigelow or other commercial speech holdings as providing constitutional protection to advertising of prostitution. Cf. St. Pierre v. State, 92 Nev. 546, 548, 554 P.2d 1126 (1976).

In sum, the legislative enactment in question does not clearly contravene constitutional principles as thus far articulated by the United States Supreme

Court. Other constitutional challenges are unmeritorious and require no discussion.

MOWBRAY, J.

We concur:

GUNDERSON, C.J.

BATJER, J.

BEKO, D.J.[2]

MANOUKIAN, J., concurring:

I concur in the result. However, I believe that those in the majority fail to sufficiently address the important First Amendment issue of this appeal. This Court has not had occasion to decide a "pure" First Amendment question since our holding in Viale v. Foley, 76 Nev. 149, 350 P.2d 721 (1960). In light of the many recent United States Supreme Court holdings bearing on this vital question, it is incumbent on this Court

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2 The Governor designatated the Honorable William P. Beko, Judge of the Fifth Judicial District Court, to sit in the place of the Honorable Gordon Thompson, Justice. Nev. Const., art. 6, § 4.

to re-examine and fully discuss the First Amendment when it is dispositive of the case at hand.

The primary question presented and the sole issue confronted by my brethren, is whether NRS 201.430 violates the First and Fourteenth Amendments because it substantially bans advertising by a brothel in certain public areas and anywhere in counties where prostitution is illegal. Additional issues raised for our consideration are: whether NRS 201.430 constitutes a taking of property without due process of law; and whether the proscriptions of NRS 201.430 are unconstitutionally vague and overbroad.

Princess Sea Industries, Inc., a Nevada corporation, (hereinafter Princess Sea) is the owner and operator of "The Chicken Ranch" brothel in Nye County, Nevada, situated approximately 65 miles northwest of Las Vegas, located in Clark County. The brothel appears to have complied

fully with all licensing and regulatory requirements applicable to it by reason of its location in Nye County. Mead Publishing, Inc., d/b/a Las Vegas Panorama, (hereinafter Mead) and Galaxy Composition, Inc., d/b/a Las Vegas Mirror, (hereinafter Galaxy) are in the newspaper business, and there is evidence that Galaxy has in the past published advertising for houses of prostitution, including Princess Sea. The distribution and content of the papers particularly focus on the tourist industry of Clark County. Clark County has a population of more than 250,000 people; therefore, prostitution is unlawful according to state statute, NRS 244.345(8). Additionally, a Clark County ordinance proscribes prostitution and solicitation for purposes of prostitution. The record reflects that a substantial amount of the business of southern Nevada brothels is derived from Clark County.

In 1979, the state legislature enacted

Assembly Bill No. 141, amending NRS 201.430 and NRS 201.440. The amendment limits commercial advertising of prostitution to areas of the state where prostitution may be permitted and proscribes it entirely in any county, city or town where prostitution is prohibited by local ordinance or state statute.[1] Thereafter, plaintiff-appellants sought declaratory and injunctive relief from enforcement of the amended statute. These three cases were consolidated and a hearing for injunction was held. The trial court denied the request for injunctive relief and declared the legislation constitutional.

1. First Amendment Rights

Appellants contend that the advertis-

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[1] NRS 201.430 provides in part:

1. It is unlawful for any owner, operator, agent or employee of a house of prostitution, or anyone acting on behalf of any such person, to advertise any house of prostitution:

(a) In any public theater, on the public streets of any city or town, or on any public highway; or

(b) Anywhere in any county, city or town where prostitution is prohibited by local ordinance or

continued next page

ing regulation scheme of the amended statutes violates their First Amendment rights to provide a "free flow of commercial information." Virginia Pharmacy Board v. Virginia Consumer Council, 426 U.S. 748, 764 (1976). Although Princess Sea is identified as the source of the advertisement, and Mead and Galaxy as past and would-be future carriers of the ads, I perceive no significant difference among them in terms of First Amendment protection. If the speech qualifies for protection under the First Amendment, as made applicable to the states through the due process clause of the Fourteenth Amendments (see Bigelow v. Virginia, 421 U.S. 809, 811 (1975); Schneider v. State, 308 U.S. 147,

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1 continued
where the licensing of a house of prostitution is prohibited by state statute.

2. Inclusion in any display, handbill or publication of the address, location or telephone number of a house of prostitution or of identification of a means of transportation to such a house, or of directions telling how to obtain any such information, constitutes prima facie evidence of advertising for the purposes of this section.

160 (1939)), protection is afforded to the communication, to its source, and to its recipients. Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. at 756.

It should be noted that recent Supreme Court holdings have brought commercial speech under the protective shield of the First Amendment. Central Hudson Gas v. Public Service Com'n of N.Y., 447 U.S. 557, 100 S. Ct. 2343 (1980) (regulated utilities' promotional advertising); Bigelow v. Virginia, 421 U.S.809 (abortion); Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748 (prescription drug prices); Bates v. State Bar of Arizona, 433 U.S. 310 (1977) (lawyer advertising of fees). Contra, Bread v. City of Alexandria, 341 U.S. 622 (1951); Valentine v. Chrestensen, 316 U.S. 52 (1942). However, as the Court recognized in Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978), and as my brethren cursorily point out, commercial

speech is not afforded a parity with other constitutionally protected speech:

> We have not discarded the 'common sense' distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varities of speech. To require a parity of constitutional protection for commercial speech and non-commercial speech alike could invite dilution, simply by a leveling process, of the force of the Amendment's guarantee with respect to the latter kind of speech. Rather than subject the First Amendment to such a devitalization, we instead have afforded commercial speech a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, while allowing modes of regulation that might be impermissible in the realm of noncommercial expression.

436 U.S. at 455-56.

Contrary to appellants' contention, Ohralik explicitly rejects a compelling state interest level of judicial review and instructs that the reviewing court "lower[] the level of appropriate judicial scrutiny," id. at 456, when examining commercial advertisement. By doing so, the Court reaffirmed its holding in Bigelow

that a balancing of the interests involved should be undertaken, "assessing the First Amendment interest at stake and weighing it against the public interest allegedly served by the regulation." Bigelow v. Virginia, 421 U.S. at 826.

As noted by the majority, Bigelow is in certain respects similar to the case before us, although there are fundamental factual distinctions. In Bigelow, a Virginia newspaper editor was prosecuted for publishing an advertisement for a New York abortion clinic in a Virginia newspaper. A Virginia statute made the advertising of such services a misdemeanor. Balancing the competing interests involved, the Supreme Court declared the statute violative of the publisher's First Amendment rights. Appellants assert that the proposed advertisement in this case, like the advertisement in Bigelow, conveyed "information of potential interest and value to a diverse audience," id. at 822, to those with a

"general curiosity about, or genuine interest in the subject matter or the law of another state and its development," id., including those "readers seeking reform" in their own state. Id. Prostitution, like abortion, is not totally unnewsworthy. Id. Nevertheless, the advertisement of prostitution does not pertain to fundamental constitutional interests as does the advertisement of abortion, see Roe v. Wade, 410 U.S. 113 (1973); Doe v. Bolton, 410 U.S. 179 (1973). Furthermore, contrary to Bigelow, appellants' First Amendment interests do not coincide with constitutional interests of the general public.

The present case further differs from Bigelow in that no interstate regulation has been shown to exist. Nevada is not, "under the guise of exercising internal police powers, bar[ring[a citizen of another state from disseminating information about an activity that is legal in that State." Bigelow v. Virginia, 421

U.S. at 824-25.[2] NRS 201.430 deals with entirely intrastate regulation.

Even assuming that the advertisements in question are expressions protected by the First Amendment, and that substantial individual and societal interests in the free flow of commercial information are present, these interests relate to an activity which has been afforded minimal constitutional protection and which the state may completely preclude. See NRS 201.295, et seq. and NRS 202.450, et seq. Thus, the state's interests implicated in support of this statute are particularly strong. As this Court stated in State ex rel. List v. AAA Auto Leasing, 93 Nev. 483, 486, 568 P. 2d 1230, 1232 (1970):

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2 It is noteworthy that although New York at the time of the advertisements in Bigelow allowed profit-making abortion referral agencies, it was not long before it enacted legislation proscribing that type of commercial advertisement. New York adopted laws 1971, c. 725 effective July 1, 1971, amended by Laws 1972, c. 17 § 1, now codified as Art. 45 of the State's Public Health Law (Supp. 1974-75).

> Within its police power, the legislature may regulate commercial and business affairs in order to promote the health, safety, morals and general welfare of its citizens and to protect its citizens from injurious activities. Viale v. Foley, 76 Nev. 149, 350 P.2d 721 (1960). Pursuant to this power, the legislature may regulate an otherwise legitimate business which, if conducted improperly, is detrimental to the public, or it may prohibit a business activity which is essentially injurious to the public welfare, provided such legislation is not prohibited by the Constitutions of the United States or Nevada. [Citations omitted.] (Emphasis added.)

See also George v. United States, 196 F.2d 445 (9th Cir. 1952).

In addition to the state's general interest in protecting the public in commercial transactions, Ohralik v. Ohio State Bar Association, 436 U.S. 460, and incidental to its police powers, the state has a special interest in maintaining an atmosphere of decency and sound morals, and therefore in counteracting the deleterious effect prostitution may have on the public welfare. See State ex rel. Grimes v. Board, 53

Nev. 364, 372-73, 1 P. 2d 570, 572 (1930).[3] Moreover, the Supreme Court has left little doubt as to the probable validity of a statute such as the one in question when it stated: "We have no doubt that a newspaper constitutionally would be forbidden to publish a want ad proposing a sale of narcotics or soliciting prostitutes." Pittsburgh Press Co. v. Human Relations Comm'n, 413 U. S. 376, 388 (1973).

This state interest must be balanced against appellants' interest in advertising the brothel. The trial court found that the brothel is "not an entirely lawful activity." Even assuming that the maintenance of such a house is legal

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[3] In the absence of express legislative findings we will presume the existence of facts that would support the legislative judgment. Viale v. Foley, 76 Nev. at 154-55, 350 P.2d at 724. Nevertheless, here I note some of our cases reflecting the adverse consequences of solicitation for purposes of prostitution and prostitution. Mayes v. State, 95 Nev. 250, 591 P.2d 250 (1979) (thefts committed frequently by prostitutes after having sexual intercourse with

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under the licensing scheme of NRS 244.345[4] as manifested by the continued inclusion of subsection 8,[5] such legality if confined to certain counties, including Nye. Relying on this legality, the appellants cite Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748, which held that a state may not "completely suppress the dissemination of concededly truthful information about entirely lawful activity," id, at 773, even when that information could be categorized as commercial speech.

In the instant case, however, I perceive the advertisement as proposing no more than simply a commercial transaction, markedly different from advertising which contains factual material of clear "public

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victims); Sheriff v. Horner, 96 Nev. 312, 608 P.2d 1106 (1980) living from earnings of a prostitute); Sheriff v. Hilliard, 96 Nev. 345, 608 P.2d 1111 (1980) (pandering); see also Comment, Preying on Playgrounds, the Sexploitation of Children in Pornography and Prostitution, 5 Pepperdine L. Rev. 809 (1978).

4 NRS 244.345 reads in part:
1. Every natural person, firm, association of
continued next page

interest." Bigelow v. Virginia, 421 U.S. at 822. Indeed, the speech at issue might be equated with a mere solicitation of patronage implicit in a trade name. See Friedman v. Rogers, 440 U.S. 1, 99 S.Ct. 887, 895, n. 10 (1979).

Here, the respondents contend that the regulation is a mere time, place and manner restriction, a contention which I find rather persuasive. This issue need not be discussed; however, in view of the fact that the legislature has expressly provided that local governments have the power to license, regulate and suppress brothels in unincorporated cities or towns. NRS 244.345 (1)(b), 269.175;

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4 continued

persons or corporation wishing to engage in the business of conducting a billiard or pool hall, dancing hall, bowling alley, theater, softdrink establishment, gambling game or device permitted by law, or other place of amusement, entertainment or recreation, outside of an incorporated city or incorporated town, must:

(a) Make application...to the license board of the county in which the business is to be engaged in, for a county license of the kind desired. . . .

(b) File that application with the required license fee with the county license collector. . .

see Kuban v. McGimsey, 96 Nev. 105, ___, 605 P.2d 623, 626 (1980). Nothing precludes the state from completely proscribing speech concerning this deleterious activity in Clark County, where prostitution is illegal. In addition, although the majority does not explicate, implicit in its holding is the fact that the regulation before us directly advances the governmental interest asserted. It is plain that each appellant will suffer pecuniary loss, absent use of the printed media. Yet, this does not translate into a First Amendment right which is not subject to regulation. Moreover, Princess Sea is itself free to advertise where permitted to do so, utilizing those manners or means authorized by, or not precluded by, the challenged

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5 NRS 244.345(8) provides:

8. In any county having a population of 250,000 or more, the license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any person for the purpose of prostitution.

legislation. Princess Sea may also elect to advertise through the media outside the State of Nevada.

The legislature has the right, indeed the responsibility, to determine that community standards and mores and diverse social-economic circumstances may differ from one community to another, and it may see fit to adopt, as here, a regulation to meet prevailing conditions. Cf. Miller v. California, 411 U.S. 15 (1973) (applying contemporary community standards in areas of obscenity). The measure of constitutional protection to which certain expression is entitled depends in great part upon the contents of the speeches. Central Hudson Gas v. Public Services Com'n of N.Y., ____ U.S. ____, 100 S. Ct. at 2350. The speech at hand is due little, if any, protection. It involves entertainment, not information or ideas.[6]

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6 Moreover, some of the advertisements preserved in the record on appeal have the potential of enticing

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In balancing the state's interests with the interests of appellant publishers, brothel owner, and the public, I believe the state can suppress the type of advertising before this Court, no matter how truthful the information presented. Although the First Amendment affords commercial speech "a limited measure of protection," it is equally true that "the State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity." Ohralik v. Ohio State Bar Assoc., 436 U.S. at 456. Here, I agree that the challenge to the legislation fails when balanced with the state's legitimate regulatory interests.

2. Due Process

Appellants' second contention is

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persons under 21 years of age to visit or become employed as prostitutes in contravention of NRS 201.300 and 201.360(1)(g). Also noteworthy is the fact that the ads refer to "out call service," a representation which I consider to be misleading.

that the statutory scheme regulating advertising constitutes a taking of property without due process of law. This issue is not discussed by my brethren, who apparently consider it without merit. Whether relief under this theory is warranted requires a two-part analysis. First, it must be determined whether the right to advertise is a property interest, and second, whether the regulation of such advertisement constitutes a "taking."

Advertising itself is a legitimate business, United Interchange, Inc. v. Spellacy, 136 A.2d 801, 806 (Conn. 1957), subject to reasonable regulation. Central Outdoor Advertising Co. v. Evendale, 124 N.E.2d 189, 194 (Ohio 1954). It is also well settled that the right to engage in any lawful business or occupation carries with it the concomitant right to advertise. Merit Oil Co. v. Director of Div. of Necessaries of Life, 65 N.E.2d 529, 530 (Mass. 1946). Furthermore, the right

to advertise services or products is a valuable property right, the denial of which may constitute a taking of property without due process of law. Serve Yourself Gasoline Stations Ass'n v. Brock, 249 P.2d 545, 548 (1952); Levy v. Pontiac, 49 N.W.2d 80, 82 (1951).

Next, in determining whether the statute's application would constitute a taking without due process (U.S. Const. Amend. V.; accord Nev. Const. art. 1 § 8), an examination of the enacted regulation must be undertaken to determine its propriety as an exercise of the legislature's police powers for the protection of public health, safety, morals, and general welfare. Merit Oil Co. v. Director of Div. of Necessaries of Life, 65 N.E.2d at 531. My examination of this aspect of appellants' claimed denial of their due process rights, is greatly influenced by the fact that statutes are generally presumed to be valid and it is the burden of appellants

to demonstrate their unconstitutionality. Wilmeth v. State, 96 Nev. 403, 405, 610 P.2d 735, 737 (1980). Furthermore, if, as here, a statute was enacted incidental to the state's police powers, "it is presumed that the legislature intended to promote the public welfare." Viale v. Foley, 76 Nev. at 152, 350 P.2d at 722. Here, the nature of the business which is the source of the advertising, coupled with the encumbrances and liabilities explicated in my preceding discussion regarding appellants' First Amendment claims are alone sufficient to justify the advertising proscription and regulation.

Because I have determined that the legislation has a rational basis supporting its enactment, I must now ask whether the proscription and regulation constitutes an unwarranted taking of this property right. Viale v. Foley, 76 Nev. 149, 350 P.2d 721, wherein we held that advertising of hotel and motel rates is subject to

legislative regulation. Viale indicates that when there is no absolute prohibition against all forms of advertising, "the statute must be construed as restrictive and regulatory of the manner and means of advertising . . . rather than an absolute prohibition against any kind of advertising [which] involves no absolute denial of a property right without due process of law." Id. at 152-53, 350 P.2d at 722-23. NRS 201.430 merely restricts brothel advertising to those counties where houses of prostitution may be licensed and prohibits such advertising only in those counties where houses of prostitution are forbidden by state statute, such as Clark County. In other areas of Nevada all forms and contents of brothel advertising remain unregulated. Thus, similar to the statutory limitation in Viale, the challenged statute is merely restrictive and regulatory of advertising. In my opinion, it involves no absolute denial of a property

right without due process of law.

If a previously lawful business can be prohibited, see Kuban, commercial advertising by an existing business can be limited or precluded incidental to the state's police power, for the reasons I have indicated. Here, as in Kuban, although the challenged legislation has a "significantly adverse economic impact upon appellants' ventures," id., at 112, 605 P.2d at 627, I believe that it does not unreasonably deprive appellants of any constitutionally protected property rights. See Kuban, id.

Appellants have failed to meet their burden of overcoming the statute's presumption of validity. I conclude, as does the majority, that this claim lacks merit.

3. Vagueness and Overbreadth.

Appellants also contend that the words of the statute are vague. The language gives sufficient warning of the proscribed acts. Wilmeth v. State, 96 Nev. at 404,

610 P.2d at 737; Roth v. United States, 354 U.S. 476, 491 (1957).

In addition, appellants challenge the statute under the "overbreadth" doctrine derived from the First and Fourteenth Amendments. Of course, the majority has already determined that NRS 201.430 is not violative of Mead's and Galaxy's First Amendment rights. In addition, the Supreme Court has stated that "the justification for the overbreadth analysis applies weakly, if at all, in the ordinary commercial context . . . ." Bates v. State Bar of Arizona, 433 U.S. at 380. See also, Ohralik v. Ohio State Bar Assn., 436 U.S. at 462, n. 20. Because it remains relevant to distinguish between commercial and non-commercial speech for purposes of applying the overbreadth doctrine, see Bates at 380, and particularly on the facts of this case, I believe that the overbreadth doctrine has no application.

I agree with the majority that the claim is without merit.

MANOUKIAN, J.

AFFIDAVIT OF MAILING

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

ROGER S. HANSON, being first duly sworn, deposes and says as follows:

1. That he is a member of the Bar of the United States Supreme Court and that to his knowledge the mailing of copies of the Petition for Writ of Certiorari to all parties and to the Clerk of the United States Supreme Court occured on the 22nd day of January, 1982.

2. Said copies were deposited in the United States Post Office, with first-class postage prepaid thereon, within the time allowed for filing addressed to the following:

Clerk of the Court
United States Supreme Court
Washington, D.C. 20543

Clerk of the Court
Nevada Supreme Court
Capitol Complex
Carson City, NV 89710

Richard H. Bryan
Attorney General
Joshua M. Landish
Deputy Attorney General
2501 E. Sahara Avenue
Las Vegas, NV 89104

Attorney for Respondent, STATE

Robert Miller
District Attorney
S. Mahlon Edwards
Deputy District Attorney
Clark County Courthouse
200 E. Carson Ave.
Las Vegas, Nevada 89101

Edward Bernstein
Attorney at Law
500 S. Fourth
Las Vegas, NV 89101

3. That said mailing was done in compliance with the United States Supreme Court Rule 28 and all parties to be served in said matter have by said mailing been served.

Hagel D. Hanson

Subscribed and sworn to before me this 22nd day of January, 1982.

Rebecca S. Smith
NOTARY PUBLIC in and for said County and State

Notary Public-State of Nevada
CLARK COUNTY
Rebecca S. Smith
My Commission Expires: Dec. 8, 1982

Opposition

1

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No. 81-1388

In the Supreme Court of the United States

October Term, 1981

PRINCESS SEA INDUSTRIES, ET AL.,
Petitioners.

vs.

STATE OF NEVADA, ET AL.,
Respondents.

RESPONDENT CLARK COUNTY'S BRIEF IN OPPOSITION

ROBERT J. MILLER
District Attorney
By: S. MAHLON EDWARDS
(Counsel of Record)
Deputy District Attorney
302 East Carson Avenue, Suite 405
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Counsel for Respondent
CLARK COUNTY

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

OPPOSITION TO QUESTIONS PRESENTED FOR REVIEW

Pursuant to Rules 22 and 34(a), Rules of the United Court, Supreme Respondent, CLARK COUNTY,[1] asserts the following:

1. These Respondents oppose Question Presented for Review No. 3 on the grounds: (A) that Petitioner, PRINCESS SEA INDUSTRIES, does not have standing to raise the issue of rights of a licensed brothel because said Petitioner was not licensed, and (B) the question of whether the prohibition of advertising said brothel is a violation of the Interstate Commerce Clause and Equal Protection Clause of the United States Constitution is raised for the first time on appeal as it was not asserted in the lower court, *Young v. Masci*, 53 S.Ct. 599, 289 U.S. 253 (1933).

2. These Respondents oppose Question Presented for Review No. 4 on the ground that the Petitioner, PRINCESS SEA INDUSTRIES, does not have standing to raise the issue of the rights of a licensed brothel because said Petitioner was not licensed. Not being licensed, the Petitioner has no direct stake in the outcome of that issue and so does not satisfy the Article III case or controversy requirements.

---

1. Respondent "CLARK COUNTY" includes THE BOARD OF CLARK COUNTY COMMISSIONERS, ROBERT H. BROADBENT, JACK R. PETITTI, THALIA DONDERO, R. J. RONZONE, MANUEL CORTEZ, SAMUEL BOWLER and DAVID CANTER, constituting the members of said Board, ROBERT J. MILLER, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA, and JOHN McCARTHY, SHERIFF OF CLARK COUNTY, NEVADA.

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No. 81-1388

In the Supreme Court of the United States

October Term, 1981

PRINCESS SEA INDUSTRIES, ET AL.,
Petitioners,

vs.

STATE OF NEVADA, ET AL.,
Respondents.

RESPONDENT CLARK COUNTY'S BRIEF IN OPPOSITION

I.

STATEMENT OF THE CASE

These Respondents accept the Statement of the Case as stated by Petitioner with the exception of the facts regarding licensing. The Findings of Fact and Conclusions of Law of the trial court, the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark (Appendix D), Finding of Fact No. 4 states:

> "That Princess Sea Industries, Inc., dba 'Chicken Ranch,' is not licensed as a house of prostitution in Nye County."

This Finding was based upon the decision of the trial court as set forth in the Petitioner's Appendix on page A-8 and was based upon the fact that a copy of Nye County Ordinance No. 81 had been received into evidence, which ordinance prohibited prostitution in Nye County.

It is true that a "Nye County Gaming Employee Work Card" was received into evidence, but said card stated, *inter alia*, "Nye County Gaming Employee Work Card . . . For Identification Purposes Only". Said card was not a business license authorizing the operation of a brothel. No evidence was received regarding "registration" of the girls working for the brothel.

Petitioner further failed to disclose Finding of Fact No. 6, upon which Justice Manoukian based footnote 6 in his concurring opinion (Petitioner's Appendix, B-25). Finding No. 6 states:

> "That Plaintiff Princess Sea Industries, Inc.'s advertisement in the 'Las Vegas Mirror', published by Plaintiff Galaxy Composition, Inc., solicits acts, the commission of which in Nevada is a felony, namely: That applications for prostitutes were 'being taken from girls 18 and over' in violation of NRS 201.300, et seq."

The only advertisement in the record is the advertisement which solicits such unlawful act.

II.

SUMMARY OF ARGUMENT

This Honorable Court should deny Petitioner's Petition for Certiorari. The brothel was not licensed and does not, therefore, have standing to present an argument of a legitimate business. The First Amendment interest which might be served by advertising an ordinary commercial proposal is absent in this case for two reasons. First, prostitution is an unlawful activity in Clark County. Second, Petitioner's only advertisement in the record solicits persons under 21 years of age to become prostitutes, which by Nevada law is a felony.

However, even if the advertisement in the record contained only lawful activities, the Nevada Legislature could regulate and restrict the advertising of lawful brothels under its police power.

The overbreadth argument has no application to this case as the speech which is restricted only has application to commercial enterprises involved in prostitution. The Petitioner cannot raise the vagueness issue because there is no uncertainty about the impact of the ordinance on its own rights and there is no "real and substantial" deterrent effect on legitimate expression.

III.

ARGUMENT

Nevada Statute (NRS 244.345(8)) prohibits the licensing of prostitution in counties with a population greater than 200,000. *Kuban v. McGimsey*, 96 Nev. 105, 605 P.2d 623 (1980). The Legislature has, however, provided that the Board of County Commissioners in the Nevada counties having a population less than 200,000 "has the power to license, regulate or suppress brothels in unincorporated cities or towns, NRS 244.345(1)(b), NRS 269.175". *Kuban v. McGimsey*, ibid. Respondent, CLARK COUNTY, has a population of over 200,000, and may not, therefore, license prostitution or brothels. Nye County, bordering Clark County to the North, had a population of less than 200,000 and had enacted an ordinance (Nye County Ordinance No. 81) prohibiting prostitution, yet had held the effective date of this ordinance in abeyance, resulting in what the trial court found:

> ". . . an activity that is not entirely lawful nor completely suppressed." (Petitioner's Appendix, A-8)

The Petitioner Nye County brothel was not licensed (Appendix, D-3).

In 1979, the Nevada Legislature amended NRS 201.430 to prohibit a brothel owner from advertising the brothel:

> ". . . in any county . . . where prostitution is prohibited . . . by state statute."

Such a law is completely within the police power of the State to protect and safeguard the health, morals, safety, well-being and tranquility of a community. *Kovacs v. Cooper*, 69 S.Ct. 448, 336 U.S. 77 (1949); *Nebbia v. People of State of New York*, 54 S.Ct. 505, 291 U.S. 502; *Breard v. Alexandria*, 341 U.S. 622, 71 S.Ct. 920.

Petitioner questions the motive of the Legislature in limiting prostitution and its advertising in some counties and yet tolerating it in others. This Court held in *Katzenbach v. Morgan*, 86 S.Ct. 1717, 384 U.S. 641 (1966), that a legislature need not:

> ". . . 'strike at all evils at the same time', (Case cited) and that 'reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind', Williamson v. Lee Optical Co., 348 U.S. 483, 489, 75 S.Ct. 461, 465, 99 L.Ed. 563."

The Nevada Legislature noted that in the larger counties where tourism is the major industry (Las Vegas is the major city and county seat of Clark County), and prostitution poses a major crime problem, *Mayes v. State*, 95 Nev. 250, 591 P.2d 250 (1979) (Thefts committed frequently by prostitutes after having sexual intercourse with victims); *Sheriff v. Horner*, 96 Nev. 312, 608 P.2d 1106 (1980) (Living from earnings of a prostitute); *Sheriff v. Hilliard*, 96 Nev. 345, 608 P.2d 1111 (1980) (Pandering). In the

smaller counties brothels can be regulated and controlled, but the advertising of such brothels in counties where prostitution is unlawful misleads the tourist, uninformed of local law, to believe that prostitution is lawful throughout Nevada, and in Clark County, thus adding to the crime enforcement and health and morals problem.

The history of prostitution in Nevada has been recognized by the courts to involve strict regulation and outright prohibition. The Nevada Supreme Court, in sustaining a Lincoln County, Nevada initiative referendum which prohibited prostitution in that county held:

> ". . . appellants' expectation to be free of governmental interference in their business operations was not reasonable in light of the history and nature of the prostitution industry in Nevada."

A.

The Ordinance Is Not Unconstitutionally Overbroad or Void for Vagueness.

> ". . . The justification for the application of overbreadth analysis applies weakly, if at all, in the ordinary commercial context."
>
> . . .
>
> "Since advertising is linked to commercial well-being, it seems unlikely that such speech is particularly susceptible to being crushed by overbroad regulations." *Bates v. State Bar of Arizona*, 97 S.Ct. 2691, 433 U.S. 350, 53 L.Ed.2d 810 (1977).

And as stated in footnote 8 in *Central Hudson Gas & Electric Corp. v. Public Service Com'n. of N.Y.*, 100 S.Ct. 2343, 447 U.S. 557 (1980):

> "This (overbreadth) restraint is less likely where the expression is linked to 'commercial well-being' and therefore is not easily deterred by 'overbroad regulation'."

The Petitioner does not have standing to raise the vagueness issue. There is no question about the impact of the statute on its own advertising and the statute does not have a "both real and substantial" deterrent effect on legitimate expression. *Young v. American Mini Theaters, Inc.*, 96 S.Ct. 2440, 2447, 427 U.S. 50, 60, 49 L.Ed.2d 310 (1976). The language of the statute gives sufficient warning of the prohibited acts, and persons are not left at their peril to guess at its intended meaning. *Roth v. United States*, 354 U.S. 476, 491.

B.

Application of First Amendment to Commercial Speech.

The law regarding commercial speech is stated in *Central Hudson Gas & Electric Corp. v. Public Service Com'n. of N.Y.*, supra:

> "The Constitution therefore accords a lesser protection to commercial speech than to other constitutionally guaranteed expression . . . The protection available for particular commercial expression turns on the *nature* both of the expression and of the governmental interests served by its regulation."
>
> . . .
>
> ". . . Consequently, there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity. *The government may ban forms of communication more likely to deceive the public than to inform it*

> (cases cited), *or commercial speech related to illegal activity*. Pittsburgh Press Co. v. Pittsburgh Com'n. on Human Relations, 413 U.S. 376, 388, 93 S.Ct. 2553, 2560, 37 L.Ed.2d 669 (1973)." (Emphasis added)

As stated above, two prime reasons exist for the enactment of the challenged statute:

One: The tourist in Clark County (the "Las Vegas Strip" casino-hotel area is in Clark County and under the jurisdiction of the Respondent BOARD OF COUNTY COMMISSIONERS) is deceived into thinking that prostitution is legal in Clark County, this causing the illegal prostitution business to flourish.

Two: Prostitution in Clark County is an illegal activity and the Petitioner brothel advertises such services in Clark County. The fact that the advertisement in the record offers "Out Call Services" and lists the telephone number of the brothel (see Petitioner's Appendix, B-24, 25, footnote 6) means that the brothel is either offering prostitution in Clark County through its out-call service or is misleading the public. As held in *Ohralik v. Ohio State Bar Ass'n.*, 98 S.Ct. 1912, 1919, 436 U.S. 447, 456, 56 L.Ed.2d 444:

> "The state does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity."

And in *Pittsburgh Press Co. v. Pittsburgh Com'n. on Human Relations*, 93 S.Ct. 2553, 2560, 413 U.S. 376, 388, this Honorable Court stated that a statute similar to NRS 201.430 would be upheld against a First Amendment challenge:

> "We have no doubt that a newspaper constitutionally would be forbidden to publish a want ad proposing a sale of narcotics or soliciting prostitutes."

Petitioner's reliance on *Bigelow v. Virginia*, 421 U.S. 809, 95 S.Ct. 2222, 44 L.Ed.2d 600, is clearly misplaced. For *Bigelow*, supra, was involved with interstate advertising of a constitutional right, abortion, while the instant case involves intrastate advertising of prostitution, which is not a constitutionally protected activity. The court in the *Bigelow* case, supra, stated:

> "We need not decide in this case the precise extent to which the First Amendment permits regulation of advertising that is related to activities the State may legitimately regulate or even prohibit."

In *Bigelow*, supra, the Virginia Legislature was attempting to prohibit the advertising of an activity which it could not regulate (see footnote 10, 95 S.Ct. at 2234) while in this case there is a clear relationship between the advertising in question and prostitution, which is an activity that the Nevada Legislature may legitimately regulate.

The *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 90 S.Ct. 1817, 48 L.Ed.2d 346 (1976) does not sustain Petitioner's argument. Therein, this Court held:

> "What is at issue is whether a State may completely suppress the dissemination of concededly truthful information about an entirely lawful activity . . ."

In the instant case, the Legislature did not "completely suppress" information, it only prevented distribution in those counties where the activity was not lawful. The advertisement was found by Justice Manoukian (Petitioner's Appendix, B-25) to be misleading, and the activity, even in Nye County, was found by the trial court not to be entirely lawful (Petitioner's Appendix, A-8, Respondent's Appendix, D-4).

The *Carey v. Population Services International*, 431 U.S. 678, 97 S.Ct. 2010, 52 L.Ed.2d 675, case is distinguished from the instant case upon the same basis as the *Bigelow*, supra, and *Virginia State Board*, supra, cases. The *Carey* case, supra, involved the sale of constitutionally protected contraceptives, and the advertising was truthful in all respects.

The *Central Hudson Gas & Electric Corp. v. Public Service Com'n. of N.Y.* case, supra, maintains this same standard, for the elements of the four-part test do not become relevant unless the "communication is neither misleading nor related to unlawful activity". As pointed out above, the communication in the instant case does not meet the criteria for First Amendment protection for the advertisement: (1) It solicited 18 year old girls to become prostitutes, which is a felony; (2) It misled the consumer into believing prostitutes were available on an out-call basis; (3) It communicated an activity in a county in which such activity was unlawful; and (4) The communication that prostitution was available misled the tourist, unacquainted with Nevada law, into believing prostitution was lawful in Clark County.

However, even assuming that the advertisement was not misleading or unlawful, still it is subject to the regulation of NRS 201.430, for: (1) The governmental interest in the suppression of prostitution and related crime and disease is substantial (see also, Petitioner's Appendix, B-19); (2) The regulation of advertising directly advances the governmental interest in controlling such crime and disease in Clark County; and (3) The restriction is not more extensive than is necessary for it only affects the advertising in counties where prostitution is unlawful.

CONCLUSION

In weighing the First Amendment interest at stake in this case with the public interest served by the regulation, we find that the brothel business is one which at common law was a crime *malum in se* and involved moral turpitude. *State v. Biggs,* 225 P.2d 1055, 38 A.L.R.2d 720 (1953). In Nevada brothels were outlawed by County ordinance:

> ". . . to the protection of the public morals, safety and welfare of the County." *Kuban v. McGimsey,* supra.

The regulation on the other hand only prohibits the advertising by brothels in counties where prostitution is prohibited. This reasonable restriction was designed to meet the evil in tourist centers as previously discussed herein. The First Amendment permits regulation of advertising that is related to activities the State may legitimately prohibit. *United States v. Bob Lawrence Realty, Inc.,* 474 F.2d 115, 121 (CA5), cert. denied, 414 U.S. 826, 94 S.Ct. 131, 38 L.Ed.2d 59 (1973); *Rockville Reminder, Inc. v. United States Postal Service,* 480 F.2d 4 (CA2 1973); *United States v. Hunter,* 459 F.2d 205 (CA4), cert. denied, 409 U.S. 934, 93 S.Ct. 235, 34 L.Ed.2d 189 (1972).

It is therefore respectfully submitted that the Petition for Certiorari should be denied.

Respectfully submitted,

ROBERT J. MILLER
District Attorney
By: S. MAHLON EDWARDS
Deputy District Attorney
302 East Carson Avenue, #405
Las Vegas, Nevada 89101
Attorneys for Respondent
CLARK COUNTY

Appendix

APPENDIX D

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE EIGHTH JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF CLARK, FILED AUGUST 20, 1979

IN THE
EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

CASE NO. A189681

Dept. No. III E

GALAXY COMPOSITION, INC., a Nevada corporation, dba LAS VEGAS MIRROR,
Plaintiff,

vs.

STATE OF NEVADA, CLARK COUNTY, a political subdivision of the State of Nevada, BOARD OF CLARK COUNTY COMMISSIONERS, ROBERT N. BROADBENT, JACK R. PETITTI, THALIA DONDERO, R. J. RONZONE, MANUEL CORTEZ, SAMUEL BOWLER and DAVID CANTER, constituting the members of said Board; ROBERT MILLER, District Attorney, Clark County, Nevada, RICHARD BRYAN, Attorney General, State of Nevada, JOHN McCARTHY, Sheriff of Clark County, Nevada, JOHN DOES I through V, and DOE CORPORATIONS I through V,
Defendants.

CASE NO. A189680

Dept. No. X K

MEAD PUBLISHING, INC., a Nevada corporation, dba LAS VEGAS PANARAMA,
Plaintiff,

vs.

STATE OF NEVADA, CLARK COUNTY, a political subdivision of the State of Nevada, BOARD OF CLARK COUNTY COMMISSIONERS, ROBERT N. BROADBENT, JACK R. PETITTI, THALIA DONDERO, R. J. RONZONE, MANUEL CORTEZ, SAMUEL BOWLER and DAVID CANTER, constituting the members of said Board; ROBERT MILLER, District Attorney, Clark County, Nevada, RICHARD BRYAN, Attorney General, State of Nevada, JOHN McCARTHY, Sheriff of Clark County, Nevada, JOHN DOES I through V, and DOE CORPORATIONS I through V,
Defendants.

CASE NO. A189674

Dept. No. VIII M

PRINCESS SEA INDUSTRIES, INC.,
a Colorado corporation,
Plaintiff,

vs.

THE STATE OF NEVADA; and THE COUNTY OF CLARK, by and through its Board of County Commissioners, Chairman, SAM BOWLER, DAVID CANTER, THALIA DONDERO, ROBERT BROADBENT, MANUEL CORTEZ, R. J. RONZONE, and JACK PETITTI; JOHN McCARTHY, in his capacity as Sheriff of Clark County, and ROBERT J. MILLER, in his capacity as District Attorney of Clark County, Nevada,
Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW

These consolidated causes came on for trial for relief declaring the constitutionality of Assembly Bill 141 of the 1979 Nevada State Legislature, and for a hearing on motions for injunctive relief, restraining the enforcement of said legislative enactment, and the court, having heard the evidence and considered the arguments of the parties, finds all findings of fact and conclusions of law made by the court in its written decision of August 1, 1979, which are specifically incorporated herein and the facts and states the conclusions of law as follows:

FINDINGS OF FACT

1. That on July 1, 1979, Assembly Bill 141, enacted by the 1979 Nevada State Legislature, became effective, amending NRS 201.430 and 201.440 which prohibited the advertising of a house of prostitution.

> "anywhere in any county, city or town where prostitution is prohibited by local ordinance or where the licensing of a house of prostitution is prohibited by state statutes"

or in any county, in a place of business.

2. That by ordinance (Clark County Code 6.08) and Nevada Statute NRS 244.345(8), prostitution is prohibited in Clark County, Nevada.

3. That the Plaintiff Princess Sea Industries, Inc. is the owner and operator of a house of prostitution, located in Nye County, Nevada, known as "The Chicken Ranch".

4. That Princess Sea Industries, Inc., dba "Chicken Ranch" is not licensed as a house of prostitution in Nye County.

5. That the Plaintiff Princess Sea Industries, Inc., had, prior to the enactment of Assembly Bill 141 by the 1979 Nevada State Legislature, regularly advertised in a publication entitled "The Las Vegas Mirror", published by Plaintiff Galaxy Composition, Inc.

6. That Plaintiff Princess Sea Industries Inc.'s advertisement in the "Las Vegas Mirror", published by Plaintiff Galaxy Composition, Inc., solicits acts, the commission of which in Nevada is a felony, namely: that applications for prostitutes were "being taken from girls 18 and over" in violation of NRS 201.300 et seq.

7. That the maintenance and operation of houses of prostitution is contrary to public decency and good morals and has a deleterious effect on public welfare.

8. That the operation and maintenance of a house of prostitution in Nye County is not an entirely lawful activity.

9. That Assembly Bill 141 enacted by the 1979 Nevada Legislature was enacted in the exercise of the State's police power to promote public welfare.

10. That the presumption of the existence of facts supporting Assembly Bill 141 was not rebutted at trial; the Plaintiffs did not carry the burden of showing said enactment violated the First, Fifth or Fourteenth Amendment of the United States Constitution or the Constitution of the State of Nevada.

11. That the Plaintiffs presented no competent evidence regarding irreparable injury.

CONCLUSIONS OF LAW

1. That the keeping of a house of prostitution at common law was a crime malum in se involving moral turpitude, and which in Nevada is contrary to public decency

and good morals and which may subject persons involved therein to felony prosecution (NRS 201.300 et seq.).

2. That the ownership and operation of a house of prostitution, and the engaging in the business thereof is not a fundamental or inherent right protected by either the United States or State of Nevada Constitutions.

4. That the advertising of a house of prostitution is not protected by the First Amendment and may be prohibited within the State of Nevada by the Nevada Legislature.

5. That the business of publishing advertisements has no constitutional right to publish advertisements regarding houses of prostitution.

6. That Assembly Bill 141 enacted by the 1979 Nevada Legislature is a valid constitutional exercise of the police power of the State, said bill is not vague, overbroad, arbitrary, capricious, discriminatory, unreasonable or void.

7. That an injunction will adversely affect the public interest.

8. That the Complaints on file herein as to all Defendants must be dismissed on the merits, with prejudice.

DATED this 20 day of August, 1979.

/s/ Michael J. Wendell
District Judge

Robert J. Miller
District Attorney
By /s/ S. Mahlon Edwards
S. Mahlon Edwards
Deputy District Attorney
Clark County Courthouse
Las Vegas, Nevada 89101
Attorneys for Defendants

Opposition

2

Supreme Court, U.S.
FILED
MAR 20 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1388

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

PRINCESS SEA INDUSTRIES, ET AL.,
Petitioners,

v.

STATE OF NEVADA, ET AL.,
Respondents.

RESPONDENTS STATE OF NEVADA'S AND RICHARD BRYAN'S BRIEF IN OPPOSITION

RICHARD H. BRYAN
Attorney General

By: JAMES I. BARNES
(Counsel of Record)
Deputy Attorney General
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201 South Fall Street
Carson City, Nevada 89710

Counsel for Respondents
STATE OF NEVADA and
RICHARD BRYAN

OPPOSITION TO QUESTIONS PRESENTED FOR REVIEW

Pursuant to Rules 22 and 34(a), Rules of the United Court, Supreme Respondent, State of Nevada, Richard Bryan, Attorney General, asserts the following:

1. These Respondents oppose Question Presented for Review No. 3 on the grounds: (A) that Petitioner, PRINCESS SEA INDUSTRIES, does not have standing to raise the issue of rights of a licensed brothel because said Petitioner was not licensed, and (B) the question of whether the prohibition of advertising said brothel is a violation of the Interstate Commerce Clause and Equal Protection Clause of the United States Constitution is raised for the first time on appeal as it was not asserted in the lower court, Young v. Masci, 53 S.Ct. 599, 289 U.S. 253 (1933).

2. These Respondents oppose Question Presented for Review No. 4 on the ground that the Petitioner, PRINCESS SEA INDUSTRIES, does not have standing to raise the issue of the rights of a licensed brothel because said Petitioner was not licensed. Not being licensed, the Petitioner has no direct stake in the outcome of that issue and so does not satisfy the Article III case or controversy requirements.

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I.

STATEMENT OF THE CASE

These Respondents accept the Statement of the Case as stated by Petitioner with the exception of the facts regarding licensing. The Findings of Fact and Conclusions of Law of the trial court, the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark (Appendix D), Finding of Fact No. 4 states:

> "That Princess Sea Industries, Inc., dba 'Chicken Ranch,' is not licensed as a house of prostitution in Nye County."

This Finding was based upon the decision of the trial court as set forth in the Petitioner's Appendix on page A-8 and was based upon the fact that a copy of Nye County Ordinance No. 81 had been received into

evidence, which ordinance prohibited prostitution in Nye County.

Petitioner further omitted to disclose Finding of Fact No. 6, upon which Justice Manoukian based footnote 6 in his concurring opinion (Petitioner's Appendix, B-25). Finding No. 6 states:

> "That Plaintiff Princess Sea Industries, Inc.'s advertisement in the 'Las Vegas Mirror', published by Plaintiff Galaxy Composition, Inc., solicits acts, the commission of which in Nevada is a felony, namely: That applications for prostitutes were 'being taken from girls 18 and over' in violation of NRS 201.300, et seq."

The only advertisement in the record is the advertisement which solicits such unlawful act.

II.

SUMMARY OF ARGUMENT

Petitioners petition for Certiorari should be denied. The argument that Nevada Statute (N.R.S. 201.430) which prohibiting the advertising of prostitution in those counties, cities and towns where prostitution is prohibited by local ordinance or state statute, is void for vagueness is completely without merit. The statute is explicitly clear in defining the proscribed conduct.

The contention of petitioners that the statute in question must be found unconstitutional for overbreath, assumes, erroneously, that the overbreath doctrine is a traditional remedy mandated by a First Amendment challenge to legislation.

The application of overbreath analysis is an extreme remedy which has no application to commercial speech in the instant case.

There is distinction in the protection afforded commercial speech, and other constitutionally guarantees expression. The level of Judicial scrutiny is lowered to a balancing of the conflicting interests between the statutory prohibition on advertising and the First Amendment. The limitations on advertising in the case at Bar are mere time, place and manner restraints which are not violative of petitioner's First Amendment rights.

III.

ARGUMENT

It is petitioner's contention (p.34) that the Surpeme Court of Nevada erred in determining that Nevada Statute (N.R.S. 201.430), which restricts advertising of prostitution to those areas outside unincorporated cities and towns where houses of prostitution may be licensed and forbids advertising in those counties, cities or towns where prostitution is prohibited by local ordinance; or where the licensing of a house of prostitution is prohibited by state statute; was not violative of the First and Fourteenth Amendments of the United States Constitution. The decision of the Nevada Supreme Court, however, is plainly correct and does not conflict with any decision of this court. Further, review of this question of state law thus is unwarranted.

A.

NEVADA STATUTE, N.R.S. 201.430, IS NEITHER UNCONSTITUTIONALLY OVERBROAD OR VOID FOR VAGUENESS

Petitioners assert that the Nevada Revised Statute in question, N.R.S. 201.430, is both vague and overly broad. As the Nevada Supreme Court recognized, this challenge is completely without merit.

This honorable court stated in Rowan v. United States Post Office, 397 U.S. 728, 740, 90 S.Ct. 1484, 1492, 25 L.Ed. 2d 739, 745 (1970), that a statute is not vague when it gives sufficient warning of the proscribed acts:

> A statute is fatally vague only when it exposes a potential actor to some risk or detriment without giving him fair warning of the nature of the proscribed conduct."

Objective analysis of the language of the statute demonstrates a clearly defined, explicit, unequivocal description of the prohibited conduct.

Relying on Bigelow v. Virginia, 421 U.S. 809, 95 S.Ct. 222 (p.17-18) petitioners question the statute under the "overbreath" doctrine. Surely such reliance is unjustified given the distinction in the application of the overbreath doctrine to commercial speech as articulated by this court (subsequent to the Bigelow decision, Supra) in Bates v. State Bar of Arizona, 433 U.S. 350, 380-81, 97 S.C. 2691, 2707, 53 L.Ed. 2d 810, 834 (1977), in which this court stated:

> "But the justification for the application of overbreath analysis applies weakly, if at all, in the ordinary commercial context."

In the instant case the overbreath doctrine has no application to the proscribed advertisements which is speech in the ordinary commercial context having

little, if any, suceptibility to being muted by overbroad regulation. The application of overbreath analysis is an extreme remedy; which has been described by this court as "strong medicine which has been employed. . . sparingly and only as a last report." Broadrick v. Oklahoma, 413 U.S. 601, 613 93 S.Ct. 2908 2916, 37 L.Ed. 2d 830 840 (1973).

E

APPLICATION OF FIRST AMENDMENT TO COMMERCIAL SPEECH

As authority for their contention that the advertising regulation of Nevada Statute, N.R.S. 201.430, violates the First Amendment guarantees of speech and press to paid commercial advertisements petitioners cite Bigelow v. Virginia, 421 U.S. 809, 95 S.Ct. 2222, 44 L.Ed. 2d 600 and Virginia State Board of Pharmacy v. Virginia Citizens Consumer Counsel, Inc., 425 U.S. 748, 90 S. Ct. 1817, 48 L.Ed. 2d 346 (1976). Both Bigelow, Supra, and Virginia State Board of Pharmacy, Supra are factually distinct from the case at bar, and neither sustain petitioners argument.

In Bigelow, a Virginia newspaper editor was prosecuted for publishing an advertisement for a New York abortion clinic in a Virginia newspaper. A Virginia statute made the advertising of such services a misdemeanor. The advertisement is Bigelow, Supra, was interstate and pertained to a constitutional right, abortion, see Roe v. Wade, 410 U.S. 113, 35 L.Ed. 2d 147, 93 S.Ct. 705 (1973) and Doe v. Bolton, 410 U.S. 179, 35 L.Ed. 2d 201, 93 S.Ct. 739 (1973). The Virginia statute prohibited the advertising of an activity it could not legitimately prohibit. In the instant case the advertising being regulated is not interstate but intrastate. Nevada is not,

"under the guise of exercising internal police powers, bar(ring) a citizen of another state from disseminating information about an activity that is legal in that state." Bigelow v. Virginia, 421 U.S. at 824-25. Further unlike abortion, fundamental constitutional interests does not attach to prostitution. The Nevada Legislature may legitimately regulate or prohibit such activity.

Petitioners' argument that the Nevada Statute violates First Amendment guarantees of speech and press to paid commercial advertisement is not sustained by application of this court's decision in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 90 S.Ct. 1817, 48 L.Ed. 2d 346 (1976). Therein this Court held:

> "What is at issue is whether a state may completely suppress the dissemination of concededly truthful information about an entirely lawful activity. . ."

Application of this criteria to the instant case fails to demonstrate a violation of First Amendment guarantees. The Nevada Legislature, unlike that in Virginia State Board, Supra, did not seek to "completely suppress" information. The statute does not act, by any means, as an absolute prohibition to advertising; but simply restricts advertising to those areas outside unincorporated cities and towns where houses of prostitution may be licensed. It forbids advertising in those counties, cities or towns where prostitution is prohibited by local ordinance, or where the licensing of a house of prostitution is prohibited by state statute.

Petitioners' First Amendment interest is adequately protected in those areas where houses of prostitution may be licensed. Any limitations on advertising in those areas are mere time, place and manner restrictions.

Further, the advertisement was not "concededly truthful." Justice Manovkian (Petitioners' Appendix, B-25) correctly found the advertisement to be misleading and the operation of an unlicensed brothel in Nye County was found by the trial court not to be an "entirely lawful activity." (Petitioner's Appenix A-8, Respondent's Appendix D-4).

Carey v. Population Services International, 431 U.S. 678, 97 S.Ct. 2010, 52 L.Ed. 2d 675, which reiterates the requirements of Virginia State Board, Supra, is clearly distinquished from the instant case upon the same basis as the Bigelow, Supra, and Virginia State Board, Supra, cases. Unlike the instant case Cary, Supra; involved a fundamental constitutional interest; the sale of constitutionally protected contraceptives. Unlike the instant case the advertisement in Carey, Supra, was "concededly truthful."

As the court recognized in Oltrank v. Ohio State Bar Association, 436 U.S. 447, 455-56, 98 S.Ct. 1912, 1919 56 L.Ed. 2d 444 commercial speech is not afforded a parity with other constitutionally protected speech, and greater regulation is permitted then would be allowed in the realm of noncommercial expression.

In Central Hudson Gas & Electric Corporation v. Public Service Commission of New York, 447 U.S. 557, 65 L.Ed. 2d 341, 100 S.Ct. 2343 (1980) this Honorable Court again recognized the distinction between commercial speech, which is accorded less protection, and other constitutionally

guaranteed expression.

> "The protection available for particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation."

Consequently, there can be no constitutional objection to the suppression of commercial messages that do not accruately inform the public about lawful activity. The government may ban forms of communication more likely to deceive the public than to inform it (cases cited), or commercial speech related to illegal activity. Pittsburgh Press Co. v. Pittsburgh Com'n on Human Relations, 413 U.S. 376, 388, 93 S.Ct. 2553, 2560 37 L.Ed. 2d 699 (1973).

The Central Hudson Gas & Electric Corp. v. Public Service Com'n. of N.Y. case, Supra requires that commercial speech must at least concern lawful activity and not be misleading to be within the ambit of First Amendment protection. The advertisement in the instant case is both misleading and related to unlawful activity. The advertisement is misleading in that its "out-call service" inclusion causes a reader to believe that prostitutes were available on an out-call basis. The advertisement is related to unlawful activity in that it solicits 18 year old girls to become prostitutes, which is a felony.

The asserted interest of the state of Nevada in the suppression of prostitution and concomitant crime, disease and detriment to the safety, health and general welfare of its citizens is more than substantial.

Assuming Arguendo, that the advertisement was neither misleading or unlawful Central Hudson Gas & Electric, Supra, requires a determination of whether (1) The regulation directly advances the governmental interest asserted, and (2) Whether it is more extensive than is necessary to serve that interest.

It is unreasonable to assume that business, of whatever nature, would invest funds in advertisements unless there was a reasonable expectation that the investment would increase profits by increasing demand for a product or service. Indeed, it is in the State of Nevada's interest to decrease the demand for a service that creates, and reinforces, crime and social pathology.

Were the regulation a general ban on advertising prostitution, failing to distinguish between those counties in which prostitution is legal and those where prostitution is illegal then it could be said that the statute would be to extensive. However, since the statutory prohibition on the advertisement of prostitution is limited only to those counties in which prostituion is an illegal activity manifestly the statute is not unduly broad.

CONCLUSION

Decisions of this honorable court confirm the principle that the commercial speech is afforded some degree of protection under the First Amendment. However, the level of judicial scrutiny is lowered to a balancing of the conflicting interest between the statutory prohibition on advertising and the First Amendment.

In this case the limitations on advertising of prostitution in counties, cities and towns where prostitution is prohibited by local ordinance or state statute are mere time, place and manner restraints. The legislation is constitutionally sound. The petition for

a Writ of Certiorari should be denied.

Respectfully submitted,

RICHARD H. BRYAN
ATTORNEY GENERAL
BY: JAMES I. BARNES
Deputy Attorney General
Capitol Complex
Carson City, Nevada 89710
Counsel for Respondents
STATE OF NEVADA and
RICHARD H. BRYAN

IN THE SUPREME COURT OF THE UNITED STATED

OCTOBER TERM, 1981

No. 81-1388

PRINCESS SEA INDUSTRIES, ET AL.
Petitioner,

vs.

STATE OF NEVADA, ET AL,
Respondents.

AFFIDAVIT OF MAILING

STATE OF NEVADA)
) SS.
CARSON CITY)

JAMES I. BARNES, being first duly sworn, deposes and says as follows:

1. That he is a member of the Bar of the United States Supreme Court and that to his knowledge the Respondents STATE OF

NEVADA'S and RICHARD H. BRYAN'S Brief in Opposition, No. 81-1388, in the case of:

PRINCESS SEA INDUSTRIES, ET AL.
Petitioners,

vs.

STATE OF NEVADA, ET AL,
Respondents,

was mailed, postage prepaid as follows: the following number of copies, addressed to the following named persons at the addresses shown, were mailed, all on the 17th day of March, 1982:

40 copies to:

Hon. Alexander L. Stevas, Clerk
Supreme Court of the United States
Supreme Court Building
#1 First Street, N.E.
Washington D.C. 20543

3 copies to:

Roger S. Hanson, Esq.
518 South Broadway
Santa Ana, California 92701
Counsel for Petitioners

3 copies to:

Robert J. Miller
District Attorney, and
S. Mahlon Edwards
Deputy District Attorney
302 East Carson Avenue, #405
Las Vegas, Nevada 89101
Counsel for Respondents
Clark County.

James I. Barnes

JAMES I. BARNES

SUBSCRIBED AND SWORN TO
before me this 17th day
of March, 1982.

Euphia O. Blinn

NOTARY PUBLIC in and for
said County and State

EUPHIA O. BLINN
Notary Public - State of Nevada
Appointment Recorded Carson City
MY APPOINTMENT EXPIRES JULY 26, 1985

FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF THE EIGHTH JUDICIAL DISTRICT COURT IN
AND FOR THE COUNTY OF CLARK,
FILED AUGUST 20, 1979

IN THE
EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

CASE NO. A189681

Dept. No. III E

GALAXY COMPOSITION, INC., a Nevada corporation, d/b/a LAS VEGAS MIRROR,

Plaintiff,

vs.

STATE OF NEVADA, CLARK COUNTY, a political subdivision of the State of Nevada, BOARD OF CLARK COUNTY COMMISSIONERS, ROBERT N. BROADBENT, JACK R. PETITTI, THALIA DONDERO, R.J. RONZONE, MANUEL CORTEZ, SAMUEL BOWLER and DAVID CANTER, constituting the members of said Board; ROBERT MILLER, District Attorney, Clark County, Nevada, RICHARD BRYAN, Attorney General, State of Nevada, JOHN MC CARTHY, Sheriff of Clark County, Nevada, JOHN DOES I through V, and DOE CORPORATIONS I through V,

Defendants.

APPENDIX "D"

CASE NO. A189680

Dept. No. X K

MEAD PUBLISHING, INC., a Nevada corporation, dba LAS VEGAS PANARAMA,

Plaintiff,

vs.

STATE OF NEVADA, CLARK COUNTY, a political subdivision of the State of Nevada, BOARD OF CLARK COUNTY COMMISSIONERS, ROBERT N. BROADBENT, JACK R. PETITTI, THALIA DONDERO, R.J. RONZONE, MANUEL CORTEZ, SAMUEL BOWLER and DAVID CANTER, constituting the members of said Board; ROBERT MILLER, District Attorney, Clark County, Nevada, RICHARD BRYAN, Attorney General, State of Nevada, JOHN McCARTHY, Sheriff of Clark County, Nevada, JOHN DOES I through V, and DOE CORPORATIONS I through V,

Defendants.

CASE NO. A189674

Dept. No. VIII M

PRINCESS SEA INDUSTRIES, INC., a Colorado corporation,

Plaintiff,

vs.

THE STATE OF NEVADA; and THE COUNTY OF CLARK, by and through its Board of County Commissioners, Chairman, SAM BOWLER, DAVID CANTER, THALIA DONDERO, ROBERT BROADBENT, MANUEL CORTEZ, R. J. RONZONE, and JACK PETITTI; JOHN McCARTHY, in his capacity as Sheriff of Clark County, and ROBERT J. MILLER, in his capacity as District Attorney of Clark County, Nevada,

Defendants.

FINDINGS OF FACT,
CONCLUSIONS OF LAW

These consolidated causes came on for trial for relief declaring the constitutionality of Assembly Bill 141 of the 1979 Nevada State Legislature, and for a hearing on motions for injunctive relief, restraining the enforcement of said legislative enactment, and the court, having heard the evidence and considered the arguments of the parties, finds all findings of fact and conclusions of law made by the court in its written decision of August 1, 1979, which are specifically incorporated herein and the facts and states the conclusions of law as follows:

FINDINGS OF FACT

1. That on July 1, 1979, Assembly Bill 141, enacted by the 1979 Nevada State Legislature, became effective, amending NRS 201.430 and 201.440 which prohibited the advertising of a house of prostitution.

> "anywhere in any county, city or town where prostitution is prohibited by local ordinance or where the licensing of a house of prostitution is prohibited by state statutes"

or in any county, in a place of business.

2. That by ordinance (Clark County Code 6.08) and Nevada Statute NRS 244.345(8), prostitution is prohibited in Clark County, Nevada.

3. That the Plaintiff Princess Sea Industries, Inc. is the owner and operator of a house of prostitution, located in Nye County, Nevada, known as "The Chicken Ranch."

4. That Princess Sea Industries, Inc., dba "Chicken Ranch" is not licensed as a house of prostitution in Nye County.

5. That the Plaintiff Princess Sea Industries, Inc., had, prior to the enactment of Assembly Bill 141 by the 1979 Nevada State Legislature, regularly advertised in a publication entitled "The Las Vegas Mirror", published by Plaintiff Galaxy Composition, Inc.

6. That Plaintiff Princess Sea Industries, Inc.'s advertisement in the "Las Vegas Mirror", published by Plaintiff Galaxy Composition, Inc., solicits acts, the commission of which in Nevada is a felony, namely: that applications for prostitutes were "being taken from girls 18 and over" in violation of NRS 201.300 et seq.

7. That the maintenance and operation of houses of prostitution is contrary to public decency and good morals and has a deleterious effect on public welfare.

8. That the operation and maintenance of a house of prostitution in Nye County is not an entirely lawful activity.

9. That Assembly Bill 141 enacted by the 1979 Nevada Legislature was enacted in the exercise of the State's police power to promote public welfare.

10. That the presumption of the existence of facts supporting Assembly Bill 141 was not rebutted at trial; the Plaintiffs did not carry the burden of showing said enactment violated the First, Fifth or Fourteenth Amendment of the United States Constitution or the Constitution of the State of Nevada.

11. That the Plaintiffs presented no competent evidence regarding irreparable injury.

CONCLUSIONS OF LAW

1. That the keeping of a house of prostitution at common law was a crime malum in se involving moral turpitude, and which in Nevada is contrary to public decency

and good morals and which may subject persons involved therein to felony prosecution (NRS 201.300 et seq.).

2. That the ownership and operation of a house of prostitution, and the engaging in the business thereof is not a fundamental or inherent right protected by either the United States or State of Nevada Constitutions.

3. That the advertising of a house of prostitution is not protected by the First Amendment and may be prohibited within the State of Nevada by the Nevada Legislature.

4. That the business of publishing advertisements has no constitutional right to publish advertisements regarding houses of prostitution.

5. That Assembly Bill 141 enacted by the 1979 Nevada Legislature is a valid constitutional exercise of the police power of the State, said bill is not vague, overbroad, arbitrary, capricious, discriminatory, unreasonable or void.

6. That an injunction will adversely affect the public interest.

7. That the Complaints on file herein as to all Defendants must be dismissed on the merits, with prejudice.

DATED this 20 day of August, 1979.

/s/ Michael J. Wendell
District Judge

Robert J. Miller
District Attorney
By/s/ S. Mahlon Edwards
S. Mahlon Edwards
Deputy District Attorney
Clark County Courthouse
Las Vegas, Nevada 89101
Attorneys for Defendants.